



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Attn: Mandatory Review, MC 4920 DAL  
1100 Commerce St.  
Dallas, TX 75242

501.15-00

Date: February 16, 2010

Release Number: 201021034

Release Date: 5/28/10

LEGEND

ORG-organization name xx - date

Address - address

ORG

ADDRESS

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice

Fax

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear

In a determination letter dated May 10, 20XX, you were held to be exempt from Federal income tax under section 501(c)(15) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(15) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(15) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On September 21, 20XX you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(15) of the Code.

You are required to file Form 1120/1120-PC U. S. Property and Casualty Insurance Company Income Tax Return with the Ogden Service Center. You have filed taxable returns on Form 1120-PC U. S. Property and Casualty Insurance Company Income Tax Return for the years ended December 31, 20XX and December 31, 20XX with us. In addition, for future periods, you are required to file Form 1120/1120-PC with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally

correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Nanette M. Downing  
Acting Director, EO Examinations



# DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street

Dallas, TX 75242

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

March 26, 2009

LEGEND

ORG = Organization name

Address = address    xx = date

ORG

ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Dear

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

We have also enclosed Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues, and Publication 3498, *The Examination Process*. These publications include information on your rights as a taxpayer, including administrative appeal procedures within the Internal Revenue Service.

If you request a conference with Appeals, we will forward your written statement of protest to the Appeals Office, and they will contact you. For your convenience, an envelope is enclosed. If you and Appeals do not agree on some or all of the issues after your Appeals conference, the Appeals Office will advise you of its final decision.

If you elect not to request Appeals consideration but instead accept our findings, please sign and return the enclosed Form 6018-A, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking your exempt status under I.R.C. § 501(c)(15). If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and send a final letter advising of our determination.

In either situation outlined in the paragraph above (execution of Form 6018-A or failure to respond within 30 days), you are required to file federal income tax returns for the tax period(s) shown above, for all years still open under the statute of limitations, and for all later years. File the federal tax return for the tax period(s) shown above with this agent within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

***Sunita Lough***

Sunita Lough  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018-A  
Report of Examination  
Envelope

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer <b>ORG.</b>		Year/Period Ended 12/31/20XX 12/31/20XX

LEGEND

ORG = Organization name      XX = Date      Country = country      CO-1 & CO-2 =  
1<sup>st</sup> & 2<sup>nd</sup> companies      TRUSTEE = Trustee

**ISSUES**

1. Does ORG. qualify for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(15), for the years beginning January 1, 20XX?
2. If ORG. does not qualify for tax exempt status for years ending January 1, 20XX, what are the tax consequences?
3. If the tax exempt status is revoked, how will it affect future years?

**FACTS**

ORG. (ORG) was formed on December 3, 20XX in the Country, under International Companies Act 1981-82, Sections 18, 24, and 25. Its purpose as stated in the Memorandum of Association included: to carry on any business, other than the business which is prohibited by the Act or the regulations from carrying on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.

On January 15, 20XX, ORG filed Application Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, with the Internal Revenue Service, seeking exemption under Internal Revenue Code (IRC) section 501(c)(15). Its purpose as stated in the application form was that the organization was a small casualty insurance company. Its principal business will be to issue casualty insurance to unrelated third parties. Initially, the company will issue reinsurance on an indemnity basis on casualty risks from unrelated third parties until sufficient surplus is obtained to commence writing casualty policies directly to unrelated third parties.

On May 10, 20XX, the organization received a determination letter, granting tax exempt status under IRC 501(c)(15).

In response to the Information Document Request mailed on March 3, 20XX, the organization stated that they provided casualty insurance to nursing homes in Texas, due to the fact that insurance was not available because of industry problems for nursing home medical liability and nursing home patient care liability. In 20XX the nursing homes for which the policies were being provided were sold and the policies with coverage which carried into 20XX were not renewed for 20XX. ORG has not issued any new policies issued or participated in any reinsurance agreements since the

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policies expired. ORG is waiting for the claims period to expire on the policies and is currently in the process of winding up its affairs.

According to the 953(d) election filed with the application on March 14, 20XX, President was the sole shareholder. Information gathered during the examination stated that CO-1, TRUSTEE, Trustee, is the sole shareholder of ORG.

Forms 990 were filed for the 20XX & 20XX tax year. The following is a breakdown of the Gross Receipts received by ORG for the years ending December 31, 20XX & 20XX, and the percentage of Gross Premiums to Gross Receipts for the same years per Notice 20XX-42.

<b>ORG</b>	<b>20XX</b>	<b>20XX</b>
Premiums Written		
Total Premiums		
Interest Income		
Dividend Income		
Capital Gains		
Other Income		
Total Gross Receipts		
Percentage- Gross Premium/Reinsurance Income to Gross Receipts		

No premiums were received in either of the two years. Other income in 20XX was on ORG's financial statement as CO-2. ORG did report \$ of unrealized appreciation as income on the Form 990 for 20XX.

An election under IRC 831(b) has never been filed. As of the writing of this report, there has never been a filing of the election, either with the filing of the Forms 990 or separately.

ORG has not been involved in any court ordered liquidation during part of 20XX & 20XX.

## **LAW AND ANALYSIS**

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer <b>ORG.</b>		Year/Period Ended 12/31/20XX 12/31/20XX

**1. Does \_\_\_\_\_ qualify for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(15) for the years beginning January 1, 2006?**

Internal Revenue Code section 501(c)(15)(A) exempts from Federal income tax insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if-

- (i.) (I) the gross receipts for the taxable year do not exceed \$600,000, and
- (II) more than 50 percent of such gross receipts consist of premiums, or
- (ii.) in the case of a mutual insurance company-
  - (I) the gross receipts of which for the taxable year do not exceed \$150,000 and,
  - (II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032(A)(e)(2), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

Sec. 206, Clarification of Exemption from Tax for Small Property and Casualty Insurance Companies, of the Pension Funding Equity Act of 2004, P.L. 108-218, amended section 501(c)(15)(A) to change the definition of small property and casualty insurance companies (insurance companies other than life insurance companies) exempt from income taxes to: (1) a company whose gross receipts for the taxable year do not exceed \$600,000, and over half such gross receipts consist of premiums (currently, whose net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$350,000); or (2) a mutual insurance company (a) whose gross receipts for the taxable year do not exceed \$150,000 and more than 35 percent of which consist of premiums and (b) none of whose employees (or member of the employee's family) is an employee of another company exempt from tax under section 501(c)(15). These changes were applicable after December 31, 2003.

Notice 2006-42, IRB, 2006-19 provides guidance as to the meaning of "gross receipts" for purposes of section 501(c)(15)(A) of the Internal Revenue Code. This notice advises taxpayers that the Service will include amounts received from the following sources during the taxable year in "gross receipts" for purposes of § 501(c)(15)(A):

- A. Premiums (including deposits and assessments), without reduction for return premiums or premiums paid for reinsurance;
- B. Items described in § 834(b) (gross investment income of a non-life insurance company); and



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C. Other items that are properly included in the taxpayer's gross income under subchapter B of chapter 1, subtitle A, of the Code.

Thus, gross receipts include both tax-free interest and the gain (but not the entire amount realized) from the sale or exchange of capital assets, because those items are described in § 834(b). Gross receipts do not, however, include amounts other than premium income or gross investment income unless those amounts are otherwise included in gross income. Accordingly, the term gross receipts does not include contributions to capital excluded from gross income under § 118, or salvage or reinsurance recovered accounted for as offsets to losses incurred under § 832(b)(5)(A)(i).

Section 834(b)(1)(D) of the Internal Revenue Code includes under gross receipts the gains from the sale or exchanges of capital assets to the extent provided in subchapter P (section 1201 and following, relating to capital gains and losses).

Based on the computations above, it is determined that                      did meet the \$600,000 limitation but was unable to meet the 50% requirement for each year. As a stock company,                      is not able to try to meet the second set of requirements. Those requirements are only for mutual companies.

Section 206(e) of the Pension Funding Act of 2004, P.L. 118-218 provides the effective date of the new requirements for exemption under IRC 501(c)(15). It states:

#### **EFFECTIVE DATE-**

(1) **IN GENERAL-** Except as provided in paragraph (2), the amendments made by this section shall apply to **taxable years beginning after December 31, 2003.**

(2) **TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION-** In the case of a company or association which--

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007.

was not involved in a court ordered liquidation during 200    or 200



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Therefore, for the years beginning January 1, 200 did not qualify for tax exempt status under IRC 501(c)(15).

**2. If does not qualify for tax exempt status for years beginning January 1, 2006, what are the tax consequences?**

Since did not qualify for tax exempt status under IRC Section 501(c)(15) for the years beginning January 1, 200 filing of the Forms 990 was incorrect. For the year beginning January 1, 200 should have filed Forms 1120-PC.

IRC 831 discusses tax on insurance companies other than life insurance companies.

IRC 831(a) states as a general rule, "Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company."

IRC 831(b) provides an alternative tax for certain small companies. It states in IRC 831(b)(1) that, in general, "In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b)."

IRC 831(b)(2) discusses the companies to which this subsection applies.

- (A) In general. This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if-
- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$1,200,000, and
  - (ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (1) are met. Such election, once made, may be revoked only with the consent of the Secretary.

Regulations (Regs.) 301.9100-8(a)(2) discusses the time for making elections. Under (i) it states in general that except as otherwise provided in this section, the elections described in paragraph (a)(1) of this section, must be made by the later of-

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- (A) The due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is effective, or
- (B) January 22, 1990 (in which case the election generally must be made by amended return)

Regs. 301.9100-8(a)(1) mentioned above includes IRC 831(b)(2)(A).

Regs. 301.9100-8(a)(3) describes the manner of making elections. It states, " Except otherwise provided in this section, the elections described in paragraph (a)(1) of this section must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective."

Based on the Code and Regulation sections above, is not entitled to the relief under 831(b), for years under examination and for any future year, until they decide to file the election. The election has never been filed, either with the Form 990 or separately. Any election filed now or in the future would only be effective for the year the election was filed and all subsequent years. The election can not be made retroactive.

### **3. If the tax exempt status is revoked, how will it affect future years?**

The tax exempt status should be revoked for the years beginning January 1, 2006. Form 1120-PC is required for each year and all future years where does not qualify for exemption. If meets the requirements under IRC 501(c)(15) in future years, it may be allowed to file the Form 990 for each year they qualify, as a self-declared entity. Otherwise, Form 1120-PC would be required. Any year in the future that the Form 1120-PC is required, is allowed to make an election under IRC 831(b). Once the election is made, it is effective for the year the election is made and for all future years that the Form 1120-PC is required. The election can not be made retroactive.

### **TAXPAYER'S POSITION**

Unknown at the time of this writing

### **SUMMARY**

It is the Governments position, based on the above facts, law and analysis, that the tax exemption status of ORG for the years beginning January 1, 20XX, should be revoked based on not meeting the qualifications for exemption under IRC 501(c)(15). Form 1120-PC would be required to be filed for any year where ORG does not qualify for exemption under IRC 501(c)(15).